IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.5348 OF 1996

Dockyard Labour Union ]
a Trade Union registered under ]
the Trade Unions Act, 1926 and ]
having its registered office ]
at 18, P.T.Kamgar Sadan, ]
Nawab Tank Road, Mazgaon, ]
Mumbai-400010 ]..Petitioner

Vs.

M/s. Mazgaon Dock Ltd. ]
Dockyard Road, Mumbai- ]
400010 ]..Respondent

....

None for Petitioner
Mr.P.M.Palshikar for Respondent

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**CORAM : B.H.MARLAPALLE,J.**

**DATE : MARCH 1,2005**

**ORAL JUDGMENT:**

1. This petition assails the judgment and order dated 11.9.1996 rendered by the learned Member of the Industrial Court at Mumbai in Complaint (ULP) No. 1065 of 1987. The said complaint was filed alleging the acts of unfair labour practice under items 5 and 9 of Schedule IV and item 4(C) of Schedule II of the MRTU and PULP Act, 1971 and the relief sought for was for the appointment of "Acting Mistry" of Mr.N.B.Yadav and Mr.Surajbhan Rai who were claimed to be the activists of the petitioner-Union. The

Industrial Court was pleased to dismiss the complaint.

2. The petitioner claims to be the trade Union registered under the Trade Unions Act, 1926 and at the relevant time, had applied for recognition under Section 14 of the MRTU and PULP Act, 1971 in place of the recognised Union by name Association of Engineering Workers and the said application was registered as Application No. (MRTU) No. 44 of 1987, in respect of the respondent-establishment. It claimed before the Industrial Court that for the post of Mistry, two workmen by name Mr.M.L.Sawant and Mr.S.N. Mundhe were appointed by superseding senior Grinders and more particularly Mr.Yadav and Mr.Rai. The appointed persons were junior most Grinders and only because they were the active members of the recognised Union, unmerited promotions were granted to them by appointing them as "Acting Mistry". It further alleged that the seniority drawn for the post of Grinders was not in keeping with the settlement signed between the Union and the Management and if the said seniority was drawn as per the settlement, Mr.Sawant and Mr.Mundhe could not have been considered for appointment as acting Mistry.

3. The respondent-Board had opposed the complaint by filing its written statement. The Board examined one

witness i.e. Mr.R.G.Ahire who was holding the post of Manager-Personnel and Industrial Relations by filing his affidavit and he was cross-examined at length by the Complainant-Union. The Union examined two witnesses viz. Mr.Maurie Lazarus Gomes who was its Secretary and also an employee of the Board since 1969 and Mr. Surajbhan Rai, one of the two employees for whose benefits the complaint was filed. From the evidence placed on record by the respective parties and their averments, it is clear that the respondent-Board had issued a Notice dated 25.4.1984 inviting application from certain categories of workmen for selection and permanent transfer to East Yard for the post of Grinders and accordingly 15 Mazdoors from the different departments were found to be fit after they had passed the trade test of Grinder. They were issued promotion letters dated 31.8.1984 and were called upon to report to the Deputy Manager (Production) of East Yard with effect from 1.9.1984.

4. In a meeting held between the Management and the recognised Union the principles for drawing seniority list of these Grinders were worked out and the following anomalies were noticed:

a) The employees who were selected and transferred to East Yard had not reported the new posting due to overtime assignment in their old department, outdoor duties, and

b) Certain employees were promised that their seniority as per the MDL joining date, will be protected.

. To get over these anomalies, a special meeting was held between the Management and recognised Union on 3.8.1987 and it was agreed as under:

A) The employees who had reported late due to overtime in their old department, will loose their seniority and the same will be taken from the date they actually reported to the East Yard, even though their letters of promotion/transfer specified the transferred date seniority;

B) The employees who were not relieved from their old department on due date, will be given a transfer date seniority on production of necessary certificate from the respective Head of the department;

C) The employees who were giving in writing that their service seniority in MDL would be protected only if it was agreed accordingly prior to the notice dated 25.4.1984 and oral understanding would not be taken into account; and,

D) Employees who were trained in Germany would be given seniority over those who were transferred subsequently.

. The Minutes of the meeting held on 3.8.1987 were brought on record at Exhibit-E along with written statement and the same was proved in the evidence of

Mr.Aher.

5. As on 1.9.1984 out of 15 Mazdoors so promoted only eight of them had reported to the East Yard and this was so communicated as per the letter at Exhibit-F which was also proved in the evidence of Mr.Aher. The names of Mr.Sawant and Mr.Mundhe were at serial nos. 1 and 2 in the list at Exh.F. Mr.Yadav and Mr.Rai admittedly did not report on 1.9.1984 and infact one of them reported on 4.9.1984 and other one reported on the next day i.e. 5.9.1984 as has been accepted in the depositions of the witnesses for the Union. In any case, they were not from amongst 8 Grinders whose names were intimated vide Exh.F.

6. The post of Mistry was a newly created post sometimes in 1987 and before the guidelines for promotion to the said post were worked out, the Management decided to fill in the said post by appointing "Acting Mistry". In the list at Exh.F, Mr.Sawant and Mr.Mundhe were at serial nos.1 and 2 respectively and as noted earlier, the names of Mr.Yadav and Mr.Rai did not find place in the said list. They had not joined on 1.9.1984 and as per the respondent, they were covered by clause (a) of the Minutes of the meeting held on 3.8.1987 between the Management and the recognised Union and therefore,

their seniority would be counted from the date they reported to the East Yard. This clearly implies that they were certainly junior to the 8 Grinders listed in Exh.F.

7. The Industrial Court framed seven issues in para no.6 and on appreciation of evidence, it held that the Management was not guilty of engaging in any unfair labour practice as alleged and its act of appointing Mr.Savant and Mr.Mundhe as acting Mistry did not amount to showing favouritism or partiality to one set of workmen and it could not be accepted that same was done with an intention to encourage the membership of the recognised Union and conversely to discourage the membership of the complainant-Union. The averments in the complaint did not point out any act of unfair labour practice within the meaning of Item No.4(C) of Schedule II and emphasis on the complaint was solely breach of settlement in drawing seniority for the post of Grinders and the appointment of Mr.Sawant and Mr.Mundhe as acting Mistry was unmerited and it was done by way of granting undue favour to the recognised Union. The complaint was thus under items no. 5 and 9 of Schedule IV of the MRTU and PULP Act, 1971. The evidence as discussed by the Industrial Court and referred to hereinabove, clearly proved that there was a separate seniority list to be drawn for the

Grinders who were selected from amongst Mazdoors and it was to be on the basis of the date joining. The two workmen viz. Mr.Yadav and Mr.Rai did not join along with eight Grinders as on 1.9.1984 and therefore, they were certainly junior to these eight Grinders. The notice dated 25.4.1984 clearly stated "a separate seniority of workmen attached to East Yard will be evolved and maintained". In addition the letter of appointment dated 31.8.1984 had clearly stated that seniority in the post of Grinder would be counted from the date of joining in the said post to East Yard. The two workmen Mr.Yadav and Mr.Rai would not claim their seniority in the earlier department on their promotion as Grinder.

8. The post of Mistry was filled in by appointing acting Mistry from amongst two Grinders listed at serial nos. 1 and 2 at Exh.F and just because they were active members of the recognised Union, it could not be accepted per se that they were granted undue favours. The Union failed to bring any reliable evidence in this regard beyond mere allegations. The Management placed on record the evidence to show that even in the past, there were promotions from the post of Grinders and the beneficiaries for the same, were the active members of the very same complainant-Union.

. The reasoning given by the Industrial Court in support of its findings on the issues framed for considerations, does not suffer from any errors apparent on the face of the record and therefore, there is no case made out to disturb the said findings in dismissing the complaint. The challenge to the decision of the Industrial Court is therefore, devoid of merits and the petition must fail.

9. Hence, the Petition is hereby dismissed. No costs.

[ B.H.MARLAPALLE,J. ]